

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE CHRISTIAN DURANT,

Defendant-Appellant.

UNPUBLISHED

May 9, 2006

No. 260546

Wayne Circuit Court

LC No. 04-009391-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of discharge of a firearm toward a dwelling or occupied building, MCL 750.234b, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b.¹ Defendant was sentenced to three to 48 months in prison for discharge of a firearm, and to a consecutive two-year term for felony-firearm. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions stemmed from an alleged drive-by shooting that ended in a shootout with Detroit police officers. Officers responded to a call about a person with a weapon on Chelsea Street, and observed a large crowd in front of a home. They saw a station wagon traveling toward them at high speed. The car jumped the curb, traveled down the sidewalk, and hit a pole. The driver of the car, identified as defendant, fired into the crowd at the front of the house. The car stopped in a vacant field near the house. As defendant left the car, the police ordered him to stop. Defendant fired at the officers with a handgun, using his car for cover. The officers returned fire, and defendant was wounded. Defendant entered a nearby house where he was apprehended.

Defendant testified that he went to the home because someone had told him that people were fighting with his mother and sisters. He admitted that he brought a handgun with him, but denied that he planned to shoot anyone. When he arrived at the home, someone shot at him. The officers then arrived and began to shoot at him. He put his gun down and tried to get into the

¹ Defendant was acquitted of three related charges of assault with intent to murder, MCL 750.83.

car, but noticed that he had been shot, and went into his mother's house. He denied that he shot at the officers or the residents of the home. On cross-examination, defendant admitted that he made a statement to the police while he was in the hospital. In the statement, defendant allegedly admitted that he shot back at the house after people from the house started shooting at him. Defendant denied making this portion of his statement, but admitted that he signed the statement.

One of the home's occupants testified that she was visiting a friend when the shooting occurred, and that she was wounded. She was on the walkway of the house with other persons when she heard gunshots and saw that "a car was coming up the street real fast shooting." The car jumped the curb and stopped in a vacant lot next to the house. She stated that multiple shots came from the car towards the house.

Defendant allegedly used a nine-millimeter automatic handgun, which was found at the scene. The handgun, which held 11 bullets, was cocked and had five bullets remaining after it was retrieved. Evidence technicians discovered 38 spent .40 caliber shell casings that matched the weapons used by the officers, but did not find spent casings or bullets that matched the nine-millimeter gun. One evidence technician testified that he did not use a metal detector when searching for casings, and that the light was poor. In addition, while the technicians found evidence that six bullets had struck defendant's car, they did not discover any damage to the officers' cars or to the house. A gunshot residue test of defendant's clothing was requested but was never performed. A videotape taken from one of the police cars was played for the jury.

Defendant argues that the prosecutor failed to present sufficient evidence to support his conviction. We disagree. In sufficiency of the evidence claims, we review the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). The prosecution need not negate every reasonable theory of innocence, but must only prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence is presented. *People v Carson*, 189 Mich App 268, 269; 471 NW2d 655 (1991). All conflicts with regard to the evidence must be resolved in favor of the prosecution. *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *Id.*; *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of intentional discharge of a firearm at an occupied structure are: (1) an intentional discharge of a firearm, (2) at a facility, (3) that the defendant knows or has reason to know is an occupied structure. MCL 750.234b(1). The prosecutor presented sufficient evidence to support a finding that defendant committed this offense. Defendant argues that there was insufficient evidence to support his conviction because no casings or bullets from his nine-millimeter handgun were found at the scene and because no damage to the house was found. However, as noted above, a number of witnesses testified that defendant intentionally fired at least one shot at the occupants of the home. Defendant does not contest that he knew or should have known that the home was occupied at the time. Although defendant presented an alternative version of the events, the jury was free to find the other witnesses credible.

Defendant further argues that his conviction was against the great weight of the evidence. To support his claim he relies on the same discrepancies raised above, namely the lack of evidence of spent shell casings or bullet damage to the home. When a case is tried before a jury, failure to raise an objection to the weight of the evidence by a motion for a new trial before the trial court forfeits the issue on appeal. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Defendant claims for the first time on appeal that his convictions were against the great weight of the evidence. Thus, this issue is not preserved. Our review of this question is limited to whether there was plain error that affected defendant's substantial rights. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003).

The evidence in this case did not clearly weigh in defendant's favor, and reasonably supported the verdict. Several witnesses testified that defendant fired at the home. Moreover, defendant's trial testimony was impeached by his statement. Defendant's claimed inconsistencies do not rise to the level necessary to show reversible error. See *People v Lemmon*, 456 Mich 625, 639, 643-644; 576 NW2d 129 (1998).

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot